

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

ROBERT BRUCE READ, JR. #1568901

V.

DIRECTOR, TDCJ-CID

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CIVIL ACTION NO. 4:14cv144

ORDER OF DISMISSAL

The above-entitled and numbered civil action was referred to United States Magistrate Judge Christine A. Nowak, who issued a Report and Recommendation concluding that the petition for a writ of habeas corpus should be dismissed with prejudice. Petitioner filed objections.

The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. Having made a *de novo* review of the objections raised by Petitioner to the Report, the Court concludes that the findings and conclusions of the Magistrate Judge are correct. In his objections, Petitioner concedes that his case is time-barred, but urges that he is entitled to equitable tolling.¹ He relies on *Trevino v. Thaler*, — U.S. —, 133 S. Ct. 1911 (2013) and *Martinez v. Ryan*, — U.S. —, 132 S. Ct. 1309 (2012). However, these cases relate to excusing a procedural default, and do not apply to AEDPA's statute of limitations or the tolling of that period. *See, e.g. Arthur v. Thomas*, 739 F.3d 611, 630 (11th Cir. 2014).

In sum, Petitioner fails to show that his petition was timely filed or that he is entitled to equitable tolling. *Holland v. Florida*, 560 U.S. 631, 645 (2010) (While a court may equitably toll the AEDPA limitations period, a petitioner is not entitled to equitable tolling unless he shows that

¹Petitioner also argues that the Texas Court of Criminal Appeals denied his state habeas application on February 19, 2014, rather than February 9, 2014. Although it makes no difference to the ultimate decision of this case, Petitioner is incorrect. His state habeas application was denied on February 9, 2014, as noted in the Report and Recommendation.

he has been pursuing his rights diligently and that some extraordinary circumstance stood in his way and prevented timely filing). Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the petition for a writ of habeas corpus is **DENIED** and the case is **DISMISSED** with prejudice. A certificate of appealability is **DENIED**. It is further

ORDERED that all motions not previously ruled on are hereby **DENIED**.

SIGNED this 1st day of February, 2017.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE